

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JORDAN KEEFE,

Plaintiff,

vs.

LEROY KIRKEGARD and DAN
RIDDLE,

Defendants.

CV 17-00047-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

On June 23, 2017, this Court issued an Order finding that Plaintiff Jordan Keefe's Complaint, as currently pleaded, failed to state a claim upon which relief may be granted and was subject to dismissal. As it might have been possible to cure the defects with Mr. Keefe's claims, he was given an opportunity to file an amended complaint. He was specifically advised that if no amended complaint was filed within thirty days, the case would be recommended for dismissal. No amended complaint has been filed.

Accordingly, for the reasons set forth in the Court's June 23, 2017 Order (Doc. 5), the Court issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED WITH PREJUDICE for failure to

state a claim.

2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Keefe failed to state a claim upon which relief may be granted.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Keefe may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge

¹As this deadline allows a party to act after the Findings and Recommendations is “served,” it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 16th day of August 2017.

/s/ John Johnston
John Johnston
United States Magistrate Judge